



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

September 18, 2003

Sergeant Kyle Barton  
Professional Standards  
Haltom City Police Department  
5110 Broadway Avenue  
Haltom City, Texas 76117-3726

OR2003-6579

Dear Sgt. Barton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 187873.

The Haltom City Police Department (the "Department") received a request for copies of the following information relating to named police officer:

1. [T]he officer's personnel file, to include all disciplinary actions, awards, and reprimands given.
2. [A]ll training records and certificates received.
3. [T]he Internal Affairs file, if kept separately from the personnel file.
4. [A]ll material dealing with the hiring of the officer, initial interview, oral review board and all other exams (psychological, polygraph) that were conducted prior to hiring the officer.

You assert the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You inform us that the Department has released the remaining requested information to the requestor. We reviewed the information you submitted and considered the exceptions you claim.

Initially, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides as follows:

[T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this case, Items 1 through 5 consist of completed complaint and internal affairs investigations. Thus, the Department must release the information, unless it is expressly confidential under other law or excepted from disclosure under section 552.108. As you claim section 552.101, which constitutes other law for purposes of section 552.022, we will address your arguments for these items under this exception.

Section 552.101 of the Government Code excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses information protected by other statutes. We understand that Haltom City is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the civil service director is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Gov't Code § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. In cases in which a police department

investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *Abbott v. Corpus Christi*, No. 03-02-00785-CV, slip op., 2003 WL 21241652, at \*7 (Tex. App.—Austin May 30, 2003, no pet. h.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* at \*5, \*7. Such records may not be withheld under section 552.101 of the Act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

You claim section 143.089 governs Items 1 through 5 because the investigation and complaints at issue did not result in disciplinary action. However, we are unable to determine whether these documents are part of the files maintained by the Department under section 143.089(g). If these documents are part of the officer's personnel file maintained by the Department under section 143.089(g), then the Department must withhold these documents. If not, then the documents generally must be released to the public upon request, unless some provision of chapter 552 of the Government Code permits the Department to withhold the information.

Next, we now address your other claims for Item 6 and Items 1 through 5, in the event that they are not part of the police officer's personnel file maintained by the Department under section 143.089(g). As you acknowledge, the submitted information contains polygraph information, which is subject to section 1703.306 of the Occupations Code. Section 1703.306 states the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;

- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

Occ. Code § 1703.306. Here, Item 6 contains information derived from a polygraph examination. *See* Occ. Code § 1703.306. We find no evidence that any of the access provisions of section 1703.306 apply in this instance. *See id.* Therefore, the Department must withhold the polygraph information we have marked under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.<sup>1</sup>

Next, we note that Item 1 contains a social security number that may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the responsive records is confidential under section 405(c)(2)(C)(viii)(I), and therefore, excepted from public disclosure under section 552.101 and the referenced federal provision. However, we caution the Department that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, you should ensure that no such information was obtained or is maintained by the Department pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989) (credit reports, financial statements, and other personal financial information), 373 (1983) (assets and income source information); and some medical information or information

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<sup>1</sup> As section 552.101 is dispositive with respect to the polygraph information, we need not address your arguments under section 552.108 of the Government Code.

indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In this instance, Item 6 contains information protected by common-law privacy. Therefore, the Department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Next, we note the applicability of section 552.117(a)(2) of the Government Code to Item 6. This provision excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members.<sup>2</sup> Gov't Code § 552.117(a)(2). "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure. Item 6 contains a redacted social security number that belongs to the peace officer at issue. In accordance with section 552.117 of the Government Code, the Department must withhold this social security number.

Last, we note Item 1 contains information subject to section 552.130 of the Government Code. This provision excepts from public disclosure information relating to a driver's license or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. In this case, the information at issue contains a driver's license number and a license plate number. Therefore, the Department must withhold this information, which we have marked, under section 552.130 of the Government Code.

In summary, if the Department maintains Items 1 through 5 in departmental files in accordance with section 143.089(g) of the Local Government Code, then the Department must withhold this information from the requestor. However, if the Department does not maintain a separate departmental file, then the Department must release Items 1 through 5 in accordance with this ruling. The Department must withhold the following information under section 552.101 in conjunction with the stated statute or doctrine: 1) the polygraph information in Item 6 we have marked in accordance with section 1703.306 of the Occupations Code, 2) if applicable, the social security number we have marked in Item 1 pursuant to the 1990 amendments to the federal Social Security Act, and 3) the information we have marked in Item 6 under common-law privacy. The Department must withhold the peace officer's social security number, which you have redacted in Item 6, under section 552.117 of the Government Code. The Department must withhold the motor vehicle information we have marked in Item 1 under section 552.130 of the Government Code. The Department must release the remainder of the submitted information to the requestor.

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<sup>2</sup> In Senate Bill 1388, which became effective on June 20, 2003, the Seventy-eighth Legislature recently amended section 552.117 of the Government Code by adding "(a)" to the relevant language of this provision. *See* Act of May 30, 2003, 78<sup>th</sup> Leg., R.S., S.B. 1388, § 1 (to be codified as an amendment to Gov't Code § 552.117).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Christen Sorrell". The signature is written in a cursive, flowing style.

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 187873

Enc: Submitted documents

c: Mr. Chris Turnbow  
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(w/o enclosures)